

§ 48.4221-2 Tax-free sale of articles to be used for, or resold for, further manufacture.

(a) *Further manufacture*—(1) *In general.* Under prescribed conditions, an article subject to tax under Chapter 32 (other than a tire taxable under section 4071, which is given special treatment under section 4221(e)(2) and § 48.4221-7) may be sold tax free by the manufacturer, pursuant to section 4221(a)(1), for use by the purchaser in further manufacture, or for resale by the purchaser to a second purchaser for use by the second purchaser in further manufacture. See section 4221(d)(6) and paragraph (b) of this section for the circumstances under which an article is considered to have been sold for use in further manufacture. See section 6416(b)(3) and § 48.6416(b)-3 for the circumstances under which credit or refund is available when tax-paid articles are used in further manufacture.

(2) *Proof of resale for use in further manufacture.* See section 4221(b)(1) and paragraph (c) of this section for provisions under which the exemption provided in section 4221(a)(1) shall cease to apply in the case of an article sold by the manufacturer to a purchaser for resale to a second purchaser for use in further manufacture unless the manufacturer receives timely proof of resale for further manufacture.

(b) *Circumstances under which an article is considered to have been sold for use in further manufacture.* (1) An article shall be treated as sold for use in further manufacture if the article is sold for use by the buyer as material in the manufacture or production of, or as a component part of, another article taxable under chapter 32 of the Internal Revenue Code.

(2) An article is used as material in the manufacture or production of, or as a component of, another article if it is incorporated in, or is a part or accessory of, the other article when the other article is sold by the manufacturer. In addition, an article is considered to be used as material in the manufacture of another article if it is consumed in whole or in part in testing such other article. However, an article that is consumed in the manufacturing process other than in testing, so that it is not a physical part of the manufac-

tured article, is not considered to have been used as material in the manufacture of, or as a component part of, another article.

(c) *Proof of resale for further manufacture*—(1) *Cessation of exemption.* The exemption provided in section 4221(a)(1) and described in paragraph (a) of this section in respect of an article sold by the manufacturer to a purchaser for resale to a second purchaser for use by the second purchaser in further manufacture shall cease to apply on the first day following the close of the 6-month period which begins on the date of the sale of such article by the manufacturer, or the date of shipment of the article by the manufacturer, whichever is earlier, unless, within such 6-month period, the manufacturer receives proof, in the form prescribed by paragraph (c) (2) of this section, that the article was actually resold by the purchaser to a second purchaser for such use. If, on the first day following the close of the 6-month period, such proof has not been received, the manufacturer shall become liable for tax at that time at the rate in effect when the sale was made but otherwise in the same manner as if the article had been sold by it on such first day at a taxable price equivalent to that at which the article was actually sold. If the manufacturer later obtains such proof, it may file a claim for refund or credit of this tax. The payment of this tax by the manufacturer is not considered an overpayment by the subsequent manufacturer or producer for which the subsequent manufacturer or producer is entitled to a credit or refund under section 6416(b)(3). See section 4221(d)(6) and paragraph (b) of this section for the circumstances under which an article is considered to have been sold for use in further manufacture.

(2) *Proof of resale*—(i) *Certificate of purchaser.* The proof of resale to be received by the manufacturer, as required under section 4221(b)(1), may consist of either a copy of the invoice of the manufacturer's vendee directed to his purchaser which discloses the certificate of registry number held by each party or a statement described below. In the case of an invoice of manufacturer's vendee, it must appear from such invoice (or by statement attached

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thereto) that the article was in fact resold for use in further manufacture. In lieu of such an invoice, proof of resale may consist of a statement, executed and signed by the manufacturer's vendee. Such statement shall be in substantially the following form:

STATEMENT OF MANUFACTURER'S VENDEE

(To support tax-free sales of taxable articles to a purchaser for resale to a second purchaser for use in further manufacture (section 4221(a)(1) of the Internal Revenue Code).)

(Date) _____, 19____.

The _____, undersigned, _____ or _____ the _____ (Name of manufacturer's vendee if other than undersigned), of which I am _____ (Title), holds certificate of registry No. _____, issued by the District Director of Internal Revenue at _____.

The article or articles specified below or on the reverse side hereof were purchased tax free by _____, me, _____ or _____ by _____ (Name of manufacturer's vendee if other than undersigned), on _____ (Date) and were thereafter resold to a purchaser who holds certificate of registry No. _____, issued by the District Director of Internal Revenue at _____, for use by it as material in the manufacture or production of, or as a component part or parts of, an article or articles taxable under chapter 32 of the Internal Revenue Code, or, if the article or articles are automobile parts or accessories (to which section 4061(b) applies) or gasoline, for use by it as material (for nonfuel uses in the case of gasoline) in the manufacture or production of, or as a component part or parts of, any article or articles.

The _____, undersigned, _____ or _____ (Name of manufacturer's vendee if other than undersigned), has in my/its possession proof of tax-free resale of such article or articles in the form of related purchase orders and sales invoices, and proof of tax-free resale will be retained by _____, me _____ or _____ (Name of manufacturer's vendee if other than undersigned), for at least 3 years from the date of this statement, and will be made readily available for inspection by Government officers during such 3-year period.

I have not previously executed a statement in respect of such certificate of resale, and I understand that the fraudulent use of this statement may subject me and all parties making such fraudulent use of this statement to a fine of not more than \$10,000, or

imprisonment for not more than 5 years, or both, together with the costs of prosecution.

(Signature)

(Address)

(ii) *Period covered.* Any statement executed and signed by the manufacturer's vendee, as provided in subdivision (i) of this paragraph (c)(2), may be executed with respect to any one or more articles purchased tax free from a manufacturer and resold for use in further manufacture within the 6-month period prescribed in section 4221 (a)(1) and paragraph (c)(1) of this section. Such statement (or other prescribed proof of resale) must be retained for inspection by the district director as provided in section 6001.

(Sec. 4222 (72 Stat. 1284; 26 U.S.C. 422); secs. 4051, 4052, 4061 and 7805 of the Internal Revenue Code of 1954 (96 Stat. 2174, 2175 and 2173; 68A Stat. 917; 26 U.S.C. 4051, 4052, 4061, and 7805) and secs. 522 and 523 of the Highway Revenue Act of 1982 (Pub. L. 97-424, 96 Stat. 2185, 2186))

[T.D. 7536, 43 FR 13522, Mar. 31, 1978, as amended by T.D. 7681, 45 FR 13728, Mar. 3, 1980; T.D. 7753, 46 FR 2999, Jan. 13, 1981; T.D. 7882, 48 FR 14362, Apr. 4, 1983; T.D. 8659, 61 FR 10463, Mar. 14, 1996]

§ 48.4221-3 Tax-free sale of articles for export, or for resale by the purchaser to a second purchaser for export.

(a) *In general.* (1) An article subject to tax under Chapter 32 of the Code may be sold tax free by the manufacturer, pursuant to section 4221(a)(2) and this section, for export, or for resale by the purchaser to a second purchaser for export. See paragraph (a)(10) of § 48.0-2 for the meaning of the term "export". An article may be sold tax free by the manufacturer under the provisions of this section only if the person to whom the manufacturer sells the article intends either to export the article or to resell it to a person who intends to export it. An article may not be sold tax free under the provisions of this section by a manufacturer to a purchaser for resale to a second purchaser which does not intend to export the article itself but plans to resell it to a third purchaser for export. See section 6416 (b)(2)(A) and paragraph (b)(1) of